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8 IN THE UNITED STATE DISTRICT COURT

9 EASTERN DISTRICT OF WASHINGTON

10  
11 SPOKANE

12 CYDE MARIE ESTES,

13 Plaintiff,

14 v.

15 PROVIDENCE HEALTH & SERVICES  
- WASHINGTON, d/b/a PROVIDENCE  
16 ST. MARY MEDICAL CENTER, and  
17 d/b/a PROVIDENCE MEDICAL  
GROUP SOUTHEAST WASHINGTON  
18 NEUROSURGERY, and JASON A.  
DREYER, D.O., and LAURA  
19 MICHELLE DREYER, husband and  
20 wife and the marital community thereof,

21 Defendants.

) Case No. 4:21-cv-5042

) AMENDED COMPLAINT FOR  
) DAMAGE  
) (MEDICAL NEGLIGENCE)

22 COMES NOW Plaintiff, CYDE MARIE ESTES, by and through her attorney of record,  
23 ROBERT BEATTY-WALTERS, and for her Complaint hereby alleges as follows:

24 I. INTRODUCTION

25 1.1 This is a medical malpractice action for damages caused by an unnecessary and  
26 negligent surgery performed by JASON A. DREYER, D.O. on March 21, 2018, at Defendant

1 PROVIDENCE HEALTH & SERVICES - WASHINGTON, d/b/a PROVIDENCE ST. MARY  
2 MEDICAL CENTER, which caused severe permanent neurological injury to Plaintiff's lower  
3 spine, resulting in failed back surgery syndrome, with severe pain, disability, and loss of  
4 mobility, among other injuries as alleged herein.

5 **II. PARTIES**

6 2.1. Plaintiff, CYDE MARIE ESTES, re-alleges paragraph 1.1 as though fully set forth  
7 herein.

8 2.2 Plaintiff, CYDE MARIE ESTES, was at all times relevant to this cause of action over  
9 the age of majority and residing in Heppner, Oregon.

10 2.3. Defendant, PROVIDENCE HEALTH & SERVICES –WASHINGTON  
11 (“PROVIDENCE”) is a Washington State nonprofit corporation located in Renton, Washington,  
12 and regularly conducting business in Walla Walla County, Washington.

13 2.4. PROVIDENCE HEALTH & SERVICES - WASHINGTON did business as  
14 PROVIDENCE ST. MARY MEDICAL CENTER and PROVIDENCE MEDICAL GROUP  
15 SOUTHEAST WASHINGTON NEUROSURGERY. Defendant PROVIDENCE HEALTH &  
16 SERVICES - WASHINGTON, d/b/a PROVIDENCE ST. MARY MEDICAL CENTER, and  
17 d/b/a PROVIDENCE MEDICAL GROUP SOUTHEAST WASHINGTON NEUROSURGERY  
18 are referred to hereinafter collectively and individually as “Defendant PROVIDENCE.”

19 2.5. Defendant, JASON A. DREYER, D.O. (hereinafter “Defendant DREYER”), was  
20 at all times material, an osteopathic physician and surgeon licensed to practice in the state of  
21 Washington, specializing in neurosurgery and engaged in the provision of medical and surgical  
22 care to Plaintiff CYDE MARIE ESTES, as an agent and/or employee of Defendant  
23 PROVIDENCE. At all times relevant hereto, Defendant DREYER held himself out to be a  
24 medical and surgical care provider whose services were offered to the public for compensation. It  
25 is unknown to Plaintiff if Defendant DREYER is married; Plaintiff alleges that if he is married,  
26 all acts or omissions committed by Defendant DREYER were done both for, and on behalf of the

1 community composed of JASON A. DREYER, D.O. and his wife, LAURA MICHELLE  
2 DREYER. Based on information and belief he is a citizen of Washington. Defendants JASON  
3 A. DREYER, D.O. and his wife, LAURA MICHELLE DREYER, are hereinafter referred to as  
4 “Defendant DREYER.”

### 5 **III. JURISDICTION/VENUE**

6 3.1. Plaintiff CYDE MARIE ESTES re-alleges paragraphs 1.1 through 2.5 as though  
7 fully set forth herein.

8 3.2 This court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1332,  
9 because there is complete diversity of citizenship between the parties, and the amount in  
10 controversy exceeds \$75,000.00, exclusive of interest and costs.

11 3.3. Venue is proper in this court pursuant to 28 U.S.C. § 1391 because a substantial  
12 part of the events and omissions giving rise to the claims alleged in the Complaint occurred in  
13 the Eastern District of Washington, specifically the Spokane Division; and, one or more of the  
14 Defendants resides in the Eastern District of Washington Court.

### 15 **IV. FACTS**

16 4.1 Plaintiff CYDE MARIE ESTES re-alleges paragraphs 1.1 through 3.3 as though fully  
17 set forth herein.

18 4.2 Plaintiff CYDE MARIE ESTES underwent lower spine surgery at her L-5 to S-1 in  
19 2007 for radiculopathy. Between 2007 and 2018, Plaintiff had residual radicular symptoms  
20 down her left leg, and occasionally in her right leg. In 2011, Plaintiff CYDE MARIE ESTES had  
21 an MRI of her lower spine, which showed age-related changes of the vertebrae and discs of her  
22 spine at L-3 to L-4, and L-4 to L-5, and some scarring at the site of her 2007 surgery at L-5 to S-  
23 1. On June 23, 2016, Plaintiff CYDE MARIE ESTES again underwent an MRI of her lower  
24 spine, which showed findings similar to but improved from those from her 2011 MRI. However,  
25 she continued to have pain in her lower back with activities such as gardening, bending, and  
26 standing. Plaintiff CYDE MARIE ESTES sought care with Defendant DREYER in the fall of

2017, for worsening low back pain. Defendant DREYER recommended extensive surgery to Plaintiff's lumbar spine from L-2 to S-1, including removal of scar tissue from her 2007 surgery at L-5 to S-1, and fusion of her vertebrae with instrumentation from L-2 to S-1, using both anterior, lateral, and posterior approaches. Surgery was planned for March 21, 2018.

4.3 On or about March 21, 2018, Plaintiff CYDE MARIE ESTES underwent an extensive surgical procedure on her lower spine at PROVIDENCE ST. MARY MEDICAL CENTER in Walla Walla, Washington, which was reported and billed to Plaintiff and her health insurance companies to include the following:

1. Anterior lumbar interbody arthrodesis L4-5 and L5-S1, anterior approach.
2. Anterior lumbar interbody arthrodesis L2-3, L3-4, lateral approach.
3. Anterior plate and screws L4-5.
4. Separate anterior plate and screws L5-S1.
5. Posterolateral arthrodesis L2-3, L3-4, L4-5, L5-S1.
6. Posterior spinal instrumentation from L2-S1.
7. PEEK interbody spacer L2-3, L3-4, L4-5, L5-S1.
8. Laminectomies L3, L4, L5, S1 for the purpose of decompression, and,
9. Coregistration for spinal navigation.

4.4 The surgery was performed by Defendant DREYER, using anterior, lateral, and posterior approaches to Plaintiff's lower spine, with the assistance of surgeon Frederick I. Field, M.D., for access to the anterior lumbar spine. The surgery took more than 9 hours to complete.

4.5 Although this surgery was performed on March 21, 2018, no pre-operative MRI had been done on Plaintiff's lumbar spine since June 23, 2016.

4.6 Defendant PROVIDENCE and the physicians involved in this surgery, including Defendant DREYER, billed Plaintiff and her medical insurance companies Regence Blue Cross Blue Shield of Oregon and/or Moda Health Connexus over \$300,000 for this surgical procedure and hospitalization, including over \$100,000 for the cost of the medical hardware devices implanted into Plaintiff's

1 lumbar spine from L-2 through S-1. In addition, Defendant DREYER and Defendant  
2 PROVIDENCE billed the Plaintiff and her medical insurance companies for procedures that  
3 were not actually performed on Plaintiff's spine.

4 4.7 During this surgery, Defendant DREYER negligently caused injury to Plaintiff's  
5 spine and spinal nerves, including her arachnoid nerve center, caused injury to Plaintiff's spinal  
6 dura, and unnecessarily fused her lumbar vertebrae from L-2 through S-1, using unnecessary and  
7 excessive medical device instrumentation, causing permanent injury to Plaintiff's lower spine.

8 4.8 Defendant PROVIDENCE and Defendant DREYER both profited from Defendant  
9 DREYER'S unnecessary and excessive surgery performed on the Plaintiff and billed to the  
10 Plaintiff and her health insurance companies. Defendant PROVIDENCE utilized a compensation  
11 system for its employed surgeons which created incentives for surgeons, including Defendant  
12 DREYER, to over treat and over bill their patients, when such treatment was not medically  
13 necessary.

14 4.9 Experts have concluded that this surgery was not medically necessary and excessive,  
15 and caused unnecessary and permanent harm to the Plaintiff.

16 4.10 Defendant DREYER, on information and belief, was at all material times an  
17 employee of Defendant PROVIDENCE, and thus the actual agent of Defendant PROVIDENCE.  
18 Defendant DREYER committed these negligent acts during the scope of his employment with  
19 and for the benefit of Defendant PROVIDENCE and while performing duties as an agent of  
20 PROVIDENCE.

21 4.11 As a direct and proximate result of Defendant DREYER'S actions or omissions  
22 which constituted negligence, Plaintiff CYDE MARIE ESTES suffered injuries and damages in  
23 an amount and to an extent to be set forth fully at trial.

24 **V.**

25 **CAUSE OF ACTION FOR NEGLIGENCE VS**

26 **PROVIDENCE HEALTH & SERVICES-WASHINGTON,**

**d/b/a PROVIDENCE ST. MARY MEDICAL CENTER, and d/b/a/ PROVIDENCE  
MEDICAL GROUP SOUTHEAST WASHINGTON NEUROSURGERY (DEFENDANT  
PROVIDENCE)**

5.1 Plaintiff CYDE MARIE ESTES re-alleges paragraphs 1.1 through 4.11 as though fully set forth herein.

5.2 Defendant PROVIDENCE owed Plaintiff CYDE MARIE ESTES a nondelegable duty of care to assure that she received safe and appropriate surgical care, performed in a safe and reasonable manner, and to adopt written policies and procedures specific to surgical services, and to provide for medical staff who were qualified, trained, and supervised subject to the medical direction of Defendant PROVIDENCE.

5.3 Defendant PROVIDENCE had a duty to select and retain only competent physicians and surgeons; a duty to formulate, adopt and enforce adequate rules and policies to ensure quality care for their patients, including a duty to maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice; a duty to supervise its members and employees to assure that they adhere to the relevant standard of patient care, including a duty to create quality improvement committees to monitor and review the performance of their medical staff; and, a duty to maintain and continuously collect information concerning the hospital's experience with negative health care outcomes and incidents injurious to patients as they relate to specific physicians and surgeons.

5.4 Defendant PROVIDENCE breached the afore listed duties by, without limitation:

5.4.1 Failing to formulate, adopt and enforce adequate rules, policies; and/or adopting policing or practices which in themselves created an unnecessary and unreasonable risk of harm to Plaintiff CYDE MARIE ESTES;

5.4.2 Failing to ensure proper oversight of employees or agents to assure that Plaintiff CYDE MARIE ESTES'S care was appropriate and within the

relevant standard of care;

5.4.3 Defendant PROVIDENCE, negligently failed to monitor, proctor, or control, the surgical practice of Defendant DREYER when Defendant PROVIDENCE knew or should have known that such monitoring, proctoring, or control was necessary because of results of prior surgical cases of Defendant DREYER;

5.4.4 Defendant PROVIDENCE, negligently failed to restrict or terminate Defendant DREYER'S surgical privileges and/or his employment prior to March 21, 2018, when Defendant PROVIDENCE knew or should have known that Defendant DREYER had performed other medically unnecessary and excessive neurosurgical procedures including unnecessary spinal fusions, and used unnecessary instrumentation and medical hardware for the purpose earning excessive profits;

5.4.5 In failing to restrict or terminate Defendant DREYER'S surgical privileges and/or his employment prior to March 21, 2018, when Defendant PROVIDENCE knew or should have known that Defendant DREYER had caused other patient injuries in connection with neurosurgical procedures, including unnecessary spinal fusions, and the use of unnecessary instrumentation and medical hardware;

5.4.6 In failing to have properly-trained and objective surgeons systematically reviewing and scrutinizing Defendant DREYER'S surgeries performed at Defendant PROVIDENCE prior to March 21, 2018, for medical necessity and standard of care or other harm;

5.4.7 In failing to have in place proper, effective and consistent quality assurance review processes and procedures that were



unbiased and based upon reviews by objective physicians and surgeons trained in peer review, as required by law, and the standard of care for hospitals; and,

5.4.8 In deviating below the standard of care for a Hospital by failing to adequately monitor, proctor or control, neurosurgical cases performed by Defendant DREYER to assure his surgical care was medically necessary and not done for the purposes of earning excessive profit.

5.5 In respect to the above, PROVIDENCE, individually, and by and through the acts and omissions of its agents, representatives, employees and/or ostensible agents, failed to exercise the degree of skill and learning of a reasonably prudent hospital providing medical and neurosurgical care, including through employee or agent neurosurgeons performing in the same or similar circumstances; and, the failure to exercise such skill, care and learning was a proximate cause of the injuries and damages sustained by Plaintiff CYDE MARIE ESTES, as set forth herein above. PROVIDENCE is directly liable to the named Plaintiff under the corporate negligence doctrine.

5.6 Additionally, PROVIDENCE is vicariously liable for the negligence of its employees and agents, including Defendant DREYER, and subject to the doctrine of respondeat superior. In this regard, PROVIDENCE is liable to Plaintiff for the following breaches of the standard of care for lumbar spine surgery by its employees or agents (without limitation):

5.6.1 Failing to order and review an MRI of Plaintiff's lumbar spine before performing surgery on March 21, 2018;

5.6.2 In performing surgery on Plaintiff's lumbar spine when such surgery was not medically necessary;



5.6.3 In negligently recommending and using excessive medical device hardware instrumentation on Plaintiff's spine when such instrumentation was not medically necessary;

5.6.4 In recommending and then removing scar tissue from Plaintiff's previous L-5 to S-1, spinal surgery; and,

5.6.5 In using substandard surgical technique in attempting to remove scar tissue from Plaintiff's previous L-5 to S-1, spinal surgery causing a tear in Plaintiff's spinal dura, resulting in a permanent pseudomeningocele, and other permanent injuries to Plaintiff's spinal nerves.

5.7 The breaches in the standard of care by PROVIDENCE employees and/or agents were a proximate cause of the injuries and damages sustained by Plaintiff CYDE MARIE ESTES, as set forth herein above.

## VI.

## CAUSE OF ACTION FOR NEGLIGENCE

**VS JASON A. DREYER, D.O.**

6.1 Plaintiff re-alleges paragraphs 1.1 through 5.7 as though fully set forth herein.

6.2 In performing his duties as a neurosurgeon, Defendant DREYER had a duty of care to act with the degree of skill and learning of a reasonably prudent neurosurgeon performing in the same or similar circumstances.

6.3 Defendant DREYER breached his duty of care and was negligent by, without limitation: failing to follow the standard of care for reasonably prudent neurosurgeons performing in the same or similar circumstances during the course and scope of his pre-surgical, surgical, and follow-up care of Plaintiff CYDE MARIE ESTES as follows:

6.3.1 Failing to order and review an MRI of Plaintiff's lumbar spine before performing surgery on March 21, 2018;

6.3.2 In performing surgery on Plaintiff's lumbar spine when such surgery was not medically necessary;

6.3.3 In negligently recommending and using excessive medical device hardware instrumentation on Plaintiff's spine when such instrumentation was not medically necessary;

6.3.4 In recommending the removal of and then attempting to remove scar tissue from Plaintiff's previous L-5 to S-1, spinal surgery; and,

6.3.5 In using substandard surgical technique in attempting to remove scar tissue from Plaintiff's previous L-5 to S-1, spinal surgery causing a tear in Plaintiff's spinal dura, resulting in a permanent pseudomeningocele, and other permanent injuries to Plaintiff's spinal nerves.

6.4 Defendant DREYER committed these negligent acts during the scope of his employment with and for Defendant PROVIDENCE and while performing duties as an actual agent of PROVIDENCE.

6.5 As a direct and proximate result of Defendant DREYER'S actions or omissions which constituted negligence, Plaintiff CYDE MARIE ESTES suffered injuries and damages in an amount and to an extent to be set forth fully at trial. Defendant DREYER is now liable to Plaintiff for his breach of the duty of care as set forth herein above.

## **VII. ACTING IN CONCERT**

7.1 Plaintiff re-alleges paragraphs 1.1 through 6.5 as though fully set forth herein.

7.2 At all times relevant hereto, the named Defendants, as well as their involved employees or agents, were acting in concert. As set forth herein above, all acts or omissions of the Defendants, their employees or agents in respect to the negligent care of Plaintiff CYDE MARIE ESTES and related injuries and damages are indivisible. The Defendants are jointly and severally liable for the damages caused by the negligent care of Plaintiff CYDE MARIE ESTES.

#### VIII. PRAYER FOR RELIEF

8.1 Plaintiff re-alleges paragraphs 1.1 through 7.2 as though fully set forth herein.

8.2 NOW WHEREFORE, Plaintiff prays for judgment against the above-named Defendants as follows:

8.2.1 For an award of special damages in an amount to be proven at trial;

8.2.2 For an award of general damages in an amount to be proven at trial;

8.2.3 For an award of attorney's fees and costs if available;

8.2.4 For an award of statutory, exemplary, or punitive damages if available;

8.2.5 For an award of prejudgment interest;

8.2.6 For such other and further relief, as the court deems just and equitable.

8.3 Plaintiff reserves the right to amend the Complaint pursuant to the Court rules.

**Demand for trial by Jury:** Plaintiff hereby demands that this case be tried

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1 to a jury panel of 12 jurors with a number of alternates as agreed by the parties and  
2 ordered by the Court.

3 DATED this 18<sup>th</sup> day of October, 2021.

4 LAW OFFICE OF ROBERT BEATTY-WALTERS

5  
6 *s/ Robert Beatty-Walters*

7 **ROBERT BEATTY-WALTERS**, OSB # 954497  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 18<sup>th</sup> day of October, 2021, I served the foregoing  
**AMENDED COMPLAINT FOR DAMAGE (MEDICAL NEGLIGENCE)** on  
the individuals listed below by the methods indicated.

**JENNIFER OETTER**

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888 SW Fifth Avenue, Suite 600  
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*Of Attorneys for Defendant Providence  
Health & Services - Washington*

☐ Via First Class Mail

☐ Via Fax Transmission

☒ Via Email Transmission

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*Of Attorneys for Defendants Jason A.  
Dreyer, D.O., and LAURA MICHELLE  
DREYER*

☐ Via First Class Mail

☐ Via Fax Transmission

☒ Via Email Transmission

☒ Via CM/ECF Notice

*s/ Robert Beatty-Walters*

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ROBERT BEATTY-WALTERS, OSB # 954497  
Attorney for Plaintiff